



[Billing Code 3290-F8]

**OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**

**Docket Number USTR-2018-0009**

**Dispute Number WTO/DS540**

**WTO Dispute Settlement Proceeding Regarding United States – Certain Measures**

**Concerning Pangasius Seafood Products from Vietnam.**

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice with request for comments.

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**SUMMARY:** On February 22, 2018, Vietnam requested consultations with the United States under the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement) concerning measures that purportedly affect the import of Pangasius seafood products into the United States. That request is available at [www.wto.org](http://www.wto.org) in a document designated as WT/DS540/1. The Office of the United States Trade Representative (USTR) invites written comments from the public concerning the issues raised in this dispute.

**DATES:** Although USTR will accept any comments received during the course of the dispute settlement proceedings, you should submit your comment on or before May 20, 2018, to be assured of timely consideration by USTR.

**ADDRESSES:** USTR strongly prefers electronic submissions made through the Federal

eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments in section III below. The docket number is USTR-2018-0009. For alternatives to on-line submissions, please contact Sandy McKinzy at (202) 395-9483.

**FOR FURTHER INFORMATION CONTACT:** Mayur Patel, Associate General Counsel, at (202) 395-3150.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

USTR is providing notice that consultations have been requested pursuant to the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). If these consultations do not resolve the matter, Vietnam could request that the WTO establish a dispute settlement panel pursuant to the DSU, which would hold its meetings in Geneva Switzerland, and issue a report on its findings.

**II. Major Issues Raised by Vietnam**

On February 22, 2018, Vietnam requested consultations concerning measures it asserts affect the import, distribution, and sale of Vietnamese Pangasius fish products. Vietnam's request for consultation states that the Pangasius fish that is the subject of its request is sold as "basa," "tra," or "swai." Specifically, Vietnam's consultations request describes the measures at issue in the following terms:

- Section 10016(b) of the Food, Conservation and Energy Act of 2008, Pub. L. 110-246

(the "2008 Farm Bill"), amending the Federal Meat Inspection Act, 21 USC 601 et seq.

- Section 12106 of the Agriculture Act of 2014, Public L. 113-79 (the "2014 Farm Bill"), amending section 1(w) of the FMIA.
- 9 CFR Subchapter F, parts 530-551, "Mandatory Inspection of the Order Siluriformes and Products Derived from Such Fish" (80 FR 75589) (December 2, 2015) (the "Final Rule").
- The administrative applications of section 10016(b) of the 2008 Farm Bill and section 12106 of the 2014 Farm Bill as implemented by the Final Rule.
- 9 CFR part 541, "Marks, Marketing and Labeling of Products and Containers" (respecting fish and fish products), incorporating requirements in 9 CFR Part 317, "Labeling, Marking Devices, and Containers."
  - The administrative applications of 9 CFR part 541, including but not limited to those requirements incorporated from 9 CFR part 317 (see WT/DS540/1, pp. 2-3).

Vietnam's consultations request states that these measures appear to be inconsistent with the United States obligations under the GATT 1994 and the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement).

Specifically, Vietnam invokes the obligations in Articles 2.2, 2.3, 4.1, 5.1, 5.3, 5.6, 8, and Annex C(1)(a) of the SPS Agreement and Article I:1 of the GATT 1994.

### **III. Public Comments: Requirements for Submissions**

USTR invites written comments concerning the issues raised in this dispute. All

submissions must be in English and sent electronically via [www.regulations.gov](http://www.regulations.gov). For alternatives to electronic submissions, contact Sandy McKinzy at (202) 395-9483.

To submit comments via [www.regulations.gov](http://www.regulations.gov), enter docket number **USTR-2018-0009** on the home page and click “search.” The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting “Notice” under “Document Type” on the left side of the search-results page, and click on the link entitled “Comment Now!” For further information on using the [www.regulations.gov](http://www.regulations.gov) website, please consult the resources provided on the website by clicking on “How to Use Regulations.gov” on the bottom of the home page.

The [www.regulations.gov](http://www.regulations.gov) website allows users to provide comments by filling in a “Type Comment” field, or by attaching a document using an “Upload File” field. USTR prefers that comments be provided in an attached document. If a document is attached, it is sufficient to type “See attached” in the “Type Comment” field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the “Type Comment” field.

For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters “BC”. Any page containing business confidential information must be clearly marked “BUSINESS CONFIDENTIAL” on the top of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific

information that is business confidential. If you request business confidential treatment, you must certify in writing that disclosure of the information would endanger trade secrets or profitability, and that the information would not customarily be released to the public. Filers of submissions containing business confidential information also must submit a public version of their comments. The file name of the public version should begin with the character “P”. The “BC” and “P” should be followed by the name of the person or entity submitting the comments or rebuttal comments. If these procedures are not sufficient to protect business confidential information or otherwise protect business interests, please contact Sandy McKinzy at (202) 395-9483 to discuss whether alternative arrangements are possible.

USTR may determine that information or advice contained in a comment, other than business confidential information, is confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If a submitter believes that information or advice is confidential, s/he must clearly designate the information or advice as confidential and mark it as “SUBMITTED IN CONFIDENCE” at the top and bottom of the cover page and each succeeding page, and provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the Uruguay Round Agreements Act (19 U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding, docket number USTR-2018-0009, accessible to the public at [www.regulations.gov](http://www.regulations.gov). The public file will include non-confidential public comments USTR receives regarding the dispute. If a dispute settlement panel is convened, or in the event of an appeal from a panel,

USTR will make the following documents publicly available at [www.ustr.gov](http://www.ustr.gov): the U.S. submissions and any non-confidential summaries of submissions received from other participants in the dispute. If a dispute settlement panel is convened, or in the event of an appeal from a panel, the report of the panel, and, if applicable, the report of the Appellate Body, will also be available on the website of the World Trade Organization, at [www.wto.org](http://www.wto.org).

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